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| 09/944,348   | 08/31/2001  | Thomas P. Ivanyi     | 132.0005-00000              | 9772             |
| 22882  | 7590        | 04/13/2010           |                             |                  |
| MARTIN & FERRARO, LLP<br>1557 LAKE O'PINES STREET, NE<br>HARTVILLE, OH 44632 |             |                      | EXAMINER<br>SCHNURR, JOHN R |                  |
|  |             |                      | ART UNIT                    | PAPER NUMBER     |
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

**Application No.**

09/944,348

**Applicant(s)**

IVANYI, THOMAS P.

**Examiner**

JOHN SCHNURR

**Art Unit**

2421

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 07 December 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 83-93 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 83-93 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date: \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

### DETAILED ACTION

1. This Office Action is in response to the Amendment After Non-Final Rejection filed 12/07/2009. Claims 83-93 are pending and have been examined.

#### ***Response to Arguments***

2. Applicant's arguments filed 12/07/2009 have been fully considered but they are not persuasive.

In response to applicant's argument (Remarks pgs. 5-6) that Aras does not disclose a monitoring device that monitors on a continuous basis, the examiner respectfully disagrees. Aras clearly discloses a system that collects all behavior information events at a television receiver. The events may be initiated by AVI information, as discussed by applicant, or by subscriber actions, i.e., channel changes. For all of this information to be recorded the system must continuously monitor for subscriber actions or AVI events. (col. 14 lines 6-24, col. 24 line 29 to col. 25 line 17)

#### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims **83-93** are rejected under 35 U.S.C. 102(e) as being anticipated by **Aras et al. (US 5,872,588)**, herein Aras.

Consider **claim 83**, Aras clearly teaches a system for uninterrupted and passive continuous monitoring and measuring viewer behavior of a plurality of television viewers and pattern data among television viewer events including channel change events in a plurality of viewing premises to provide information for direct correlation with concurrent detailed data of programming and broadcasting in order to analyze and ascertain the responses of the plurality of viewers to program and advertising content for the purpose of assessing the effectiveness of said programming and advertising content, said system comprising:

a plurality of signal receiving devices located in a plurality of viewing premises (**Fig. 1A Home stations 111, col. 4 lines 41-57**), wherein each said signal receiving device comprises:

a monitor device for uninterrupted and passive continuous monitoring of television viewer behavior, (**Fig. 15 Monitor 1555**) the monitor device configured for monitoring event data generated upon occurrence of the television viewer events including channel change events to ascertain television viewer behavior and pattern data among television viewer events including channel change events on the continuous basis; (**The behavior collection table (BCT) is updated in response to events without the users direction or knowledge. Events include channel changes and other user interactions, col. 14 lines 8-24.**)

an event timing device for recording a time record of television viewer event occurrence to be used for generating time-stamped data representative of time of the occurrence corresponding to the event data; (**Fig. 12: The start time and end time of events are recorded in the BCT using a time of day clock provided in the home station, col. 20 lines 34-40.**)

a data latching device for continuous capturing and storing of the time-stamped data and the event data; (**Fig. 17: BCT 1711 is recorded in memory 1706.**)

a database for storing the time-stamped data and event data captured and stored by the data latching device. (**Fig. 12: The BCT is a database of the events, col. 20 lines 15-40.**)

Consider **claim 84**, Aras clearly teaches television viewer events comprise at least one of change of volume level, change of mute status, and change of signal receiving device status. (**col. 14 lines 13-18**)

Consider **claim 85**, Aras clearly teaches television viewer events are actions by the television viewer to change volume level. **(Mute is an event, col. 14 lines 13-18)**

Consider **claim 86**, Aras clearly teaches each signal receiving device further comprises a receiver for receiving television signals. **(col. 6 lines 45-66)**

Consider **claim 87**, Aras clearly teaches a first transmitter for providing television signals for a television. **(col. 6 lines 45-66)**

Consider **claim 88**, Aras clearly teaches a second transmitter for transmitting information reflecting viewer behavior. **(col. 25 lines 7-17)**

Consider **claim 89**, Aras clearly teaches said event timing device is a real-time clock adapted to keep time continuously while said system operates. **(col. 20 lines 34-40)**

Consider **claim 90**, Aras clearly teaches said data latching device is adapted to create a data structure comprising a 256 bit data stream which includes data representative of said time-stamped data and said viewer event data. **(Fig. 14 shows formatted BCT entries. Any size format could be utilized.)**

Consider **claim 91**, Aras clearly teaches a system for measuring behavior of a viewer based on viewer events taken in relation to delivery of a signal to a display device, the system comprising:

a plurality of signal receiving devices **(Fig. 1A Home stations 111, col. 4 lines 41-57)**, each of said signal receiving devices Including a receiver for receiving the signal, at least a portion of which is displayable on the display device **(Fig. 15 col. 24 line 29 to col. 25 line 17)**, at least one monitor adapted to continuously monitor the signal and provide information regarding the use of the signal by the viewer **(The behavior collection table (BCT) is updated in response to events without the users direction or knowledge. Events include channel changes and other user interactions, col. 14 lines 8-24.)**, a real-time clock adapted to keep time continuously during the operation of the system **(col. 20 lines 34-40)**, a data latching device adapted to read the information provided by said at least one monitor and timestamp the information based on the measurement provided by said real-time clock **(Fig. 17: BCT 1711 is recorded in memory 1706.)**, and a central processing unit adapted to control said data latching device **(col. 24 lines 49-51)**; and

a central processing computer adapted to receive data from each of said plurality of signal receiving devices. **(col. 5 lines 56-58)**

Consider **claim 92**, Aras clearly teaches a plurality of monitoring devices, said data latching device being adapted to read signals present at each of the monitoring devices to obtain a signal representative of the operational state of said signal receiving device. (**Fig. 17 col. 25 line 42 to col. 26 line 20**)

Consider **claim 93**, Aras clearly teaches said central processing computer is adapted to continuously receive and process data from the plurality of signal receiving devices. (**col. 21 lines 33-42**)

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JOHN SCHNURR whose telephone number is (571)270-1458. The examiner can normally be reached on M-F 9a-5p.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Miller can be reached on (571) 272-7353. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/John W. Miller/  
Supervisory Patent Examiner, Art Unit 2421

JRS

